

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

AUG 21 2015

OFFICE OF
MANAGING DIRECTOR

Mr. Marcus Tyrone Travenia
1265 Lisa Lane, S.E., Apt. 101
Lacey, Washington 98503

Applicant/Licensee: **Marcus Tyrone Travenia,**
d.b.a. Marcus Tyrone Travenia
Waiver Request: Financial Hardship
Disposition: **Dismissed and Denied** (47 U.S.C. §
158(c)(2); 47 C.F.R. §§ 1.1119 and 1.1166(c))
Application: 214 International Authorization
Fee: International Section 214 Application Fee
Date Filed: Not filed.
Date Application Fee Paid: Not Paid
Fee Control No.: RROG-14-00015955

Dear Mr. Travenia:

This responds to Applicant's *Request*¹ for waiver of "all regulatory fees in the amount of \$1,130.00 Section 214 Application C, E and any other Regulatory Fees associated with this filing under 47 CFR, Part 1.1113 & 1.1117." As we discuss below, we dismiss the *Request* because Applicant failed to follow Commission procedures to file with the Office of the Secretary the required separate petition to defer payment and the separate petition to waive the application and to provide appropriate financial documentation, and also because the International Bureau dismissed the underlying application, and we deny the requested relief because Applicant failed to establish both good cause and that the public interest is served by waiving the application fee.

¹ Letter from Marcus Tyrone Travenia, 1265 Lisa Ln, S.E., Apt 101, Lacey, WA 98503 to Jon Wilkins, Managing Director, FCC Managing Director, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554 (Apr. 9, 2015) (received Apr. 23, 2015) (Request) with letter from Department of Treasury, Internal Revenue Service, Ogden UT 84201 to Marcus Tyrone Travenia, 1265 Lisa Ln SE Apt 101, Lacey, WA 98503-2018266 (Mar. 23, 2015) (S corporation election), IRS Form 1040, U.S. Individual Income Tax Return, 2014 (Jan. 28, 2015) (IRS 1040), Form SSA-1099-Social Security Statement, 2014, Marcus T Travenia (SSA-1099), Marcus Tyrone Travenia, Rates and Tariffs, Original Tariff Effective: 04/01/15 (Tariff No. 001), letter from Mark A. Stephens, Chief Financial Officer, FCC, Washington, DC 20554 to Marcus T. Travenia, Owner, MTC Matrixes, 6807 14th Ave., S.E., Lacey, WA 98503 (Mar. 8, 2007) (MTC Waiver-2006), and Marcus Tyrone Travenia FCC International 214 License Business Plan 0014767412 2015 (Business Plan 2015).

Background

On April 23, 2015, Marcus Tyrone Travenia, d.b.a. Marcus Tyrone Travenia (Applicant) submitted his *Request* with several attachments addressed to the Managing Director. Applicant seeks a waiver of the application fee “d[ue] to financial hardship. [He receives] Social Security monthly income \$866.00 ... part time employment not to exceed \$1,090 gross and [his] monthly living expenses [are \$415.00].”² Applicant’s attachments include, among other exhibits, Applicant’s *S corporation election*, *IRS 1040*, *SSA-1099*, and his *Business Plan 2015*. These attachments show that (a) Applicant made an election in 2015 to report corporate income as an S corporation, (b) his 2014 reported individual income was \$2,260, (c) he received \$10,464.00 in Social Security Administration benefits, and (d) from 2011 through 2014, Applicant’s business had sales between \$58,000 and \$100,000 and net profit from \$38,000 to \$60,000.³ Applicant states in his *Business Plan 2015*, he has been “providing service since Jan 1, 1970,”⁴ that his local market growth reports progressive growth from 2008 through 2016 of new business (about 19%) and new customers (about 22%). Even so, specific financial information in his *Business Plan 2015* is blank, i.e., Applicant fails to report amounts for start-up capital, cash, expenditures, assets, liabilities or any profit or loss information.

Also on April 23, 2015, but not mentioned by Applicant in his *Request*, Applicant filed with the Commission’s International Bureau an application, file number ITC-214-INTR2015-00793, for International Section 214 authorization (*214 authorization*) to provide, in summary, facilities-based and resale global, individual, switched, Inmarsat and mobile, and private line service. In an attachment to the *214 authorization* responding to matters set forth at 47 C.F.R. §63.18, Applicant commented, “Fee CUT pending Waiver of fee request with OMD IN THE AMOUNT OF \$1,130.00.”⁵ On May 5, 2015, the International Bureau dismissed the application. We note in a related matter, that the Washington State Department of Revenue reports on March 1, 2010, Applicant registered his name with the state as a fictitious or “doing business as” entity name.⁶

Standards

The Commission’s rules at 47 C.F.R. §§ 1.49 and 1.65 establish standards to which applicants must adhere in submitting pleadings and ensuring that information furnished in an application is accurate and complete. Illegible or improperly submitted information that results in a defective application or the failure to maintain accurate and current material information may lead to dismissal.⁷

² *Request*. Applicant reported his living expenses as \$300 for rent and utilities, \$45 for telephone service, and \$70 for “business expense internet.” In addition, Applicant asserts he spends \$279 for legal fees; however, it is not clear whether this expense is annually or monthly.

³ *Business Plan 2015*, p. 3.

⁴ *Id.* at 4.

⁵ File No. ITC-214-INTR2015-00793, *Attachment* at 2.

⁶ <http://dor.wa.gov/content/doingbusiness/registermybusiness/brd/default.aspx>.

⁷ See *Order to Show Cause*, 26 FCC Rcd at 6545-46, ¶ 59; *Winnebago Cooperative Telephone Association, Memorandum Opinion and Order*, 5 FCC Rcd 1247, 1248 (1990); *Queen City Cellular Communications, Order on Review*, 5 FCC Rcd 509, 510 (1990).

Congress requires the Commission to access and collect application fees in accordance with the prescribed Schedule of Fees as set forth at 47 U.S.C. § 158 and 47 C.F.R. §§ 1.1102 – 1.1109 to reimburse the government for the specific regulatory action by the FCC.⁸ The Commission recognizes that in certain instances, payment of an application fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of good cause, specifically extraordinary and compelling circumstances,⁹ and a finding that the public interest will be served thereby.¹⁰ However, an applicant's petition to waive the fee and to defer payment of the fee must conform to our rules. In particular, the Commission's rules at 47 C.F.R. §§ 0.401, 1.7, and 1.1119 establish both the proper location and procedures for filing waiver requests and petitioning for deferral and the consequence of dismissal for failing to comply with those rules. The Commission has designated specific offices to receive and process certain matters, hence a request for relief is *filed* only upon receipt at the location designated by the Commission.¹¹

⁸ Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Budget Reconciliation Act of 1985, *Report and Order*, 2 FCC Rcd 947, 961 ¶¶ 87-88 (1987) (*Application Fee Report and Order 1987*); see also Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Reconciliation Act of 1989, *Report and Order*, 5 FCC Rcd 3558, 3574 ¶ 36 (1990).

⁹ *Application Fee Report and Order 1987*, 2 FCC Rcd at 958 ¶ 70.

¹⁰ 47 U.S.C. § 158(d)(2); 47 C.F.R. §§ 1.1119, 1.1166. See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995) (*FY 1994 Report and Order*).

¹¹ 47 C.F.R. §§ 0.401 ("The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations ... will be returned to the applicant without processing."); 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission."); *Champion Communication Services, Inc., Order on Reconsideration*, 15 FCC Rcd 23782, 23783-84 (WTB 2000).

Procedures specific to petitions to defer payment of and waive an application fee are set forth at 47 C.F.R. §1.1119.¹² This rule provides, in relevant part, "[t]he [application] fees ... may be waived or deferred in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest." A request for a waiver must "be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. ... If no fee payment is submitted, the request should be filed with the Commission's Secretary. ... Applicants seeking waivers must submit the request for waiver with the application or filing, required fee and FCC Form 159, or a request for deferral. A petition for waiver and/or deferral of payment must be submitted to the Office of the Managing Director as specified in paragraph (c) of this section. Waiver requests that do not include these materials will be dismissed in accordance with §1.1111 of this subpart. Submitted fees will be returned if a waiver is granted. The Commission will not be responsible for delays in acting upon these requests." Finally, "[p]etitions for waiver of a fee based on financial hardship will be subject to the provisions of paragraph 1.1166(e)."

¹² 47 C.F.R. §1.1119 provides:

Petitions and applications for review.

(a) The fees established by this subpart may be waived or deferred in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest.
(b) Requests for waivers or deferrals will only be considered when received from applicants acting in respect to their own applications. Requests for waivers or deferrals of entire classes of services will not be considered.
(c) Petitions for waivers, deferrals, fee determinations, reconsiderations and applications for review will be acted upon by the Managing Director with the concurrence of the General Counsel. All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. Requests for deferral of a fee payment for financial hardship must be accompanied by supporting documentation.

(1) Petitions and applications for review submitted with a fee must be submitted to the Commission's lock box bank at the address for the appropriate service set forth in §§1.1102 through 1.1107.

(2) If no fee payment is submitted, the request should be filed with the Commission's Secretary.

(d) Deferrals of fees will be granted for an established period of time not to exceed six months.
(e) Applicants seeking waivers must submit the request for waiver with the application or filing, required fee and FCC Form 159, or a request for deferral. A petition for waiver and/or deferral of payment must be submitted to the Office of the Managing Director as specified in paragraph (c) of this section. Waiver requests that do not include these materials will be dismissed in accordance with §1.1111 of this subpart. Submitted fees will be returned if a waiver is granted. The Commission will not be responsible for delays in acting upon these requests.
(f) Petitions for waiver of a fee based on financial hardship will be subject to the provisions of paragraph 1.1166(e).

There are serious consequences for disregarding the Commission's procedures for submitting an application without either the proper fee or a properly supported petition to defer payment. As set forth at 47 C.F.R. §1.1118, "filings subject to fees and accompanied by defective fee submissions will be dismissed ... where the defect is discovered ... within 30 calendar days from the receipt of the application[; however, a]pplications or filings accompanied by insufficient fees or no fees ... that are inadvertently forwarded to Commission staff for substantive review will be billed for the amount due if the discrepancy is not discovered until after 30 calendar days from receipt of the application Applications of filings that are accompanied by insufficient fees or no fees will have a penalty charge equaling 25 percent of the amount due added to each bill."

The Commission narrowly interprets its waiver authority to require a showing of extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's costs.¹³ Fee relief may be based on a "sufficient showing of financial hardship";¹⁴ however, "[m]ere allegations or documentation of financial loss, standing alone," do not suffice, and "it [is] incumbent upon each regulatee to fully document its financial position."¹⁵

As such, the Commission will look to an applicant's documentation to determine whether the applicant presents "extraordinary and compelling circumstances showing that a waiver ... would override the public interest" in collecting the fee,¹⁶ and we will analyze the facts of each case to determine whether the applicant has satisfied both prongs of the Commission's standard, financial hardship and extraordinary¹⁷ and compelling circumstances¹⁸ showing waiver is justified.¹⁹ The applicant has a duty to clarify its position with the Commission²⁰ and to maintain

¹³ Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, report and Order, 2 FCC Rcd 947, ¶88 (1987) ("good cause shown when such action will promote the public interest"); *FY 1994 Report and Order*, 9 FCC Rcd at 5344 ¶ 29; Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities."); see also 47 U.S.C. §159(d) ("[t]he Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest."); 47 C.F.R. § 1.1166 ("fee ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.").

¹⁴ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*).

¹⁵ *Id.*

¹⁶ 47 U.S.C. § 158(d)(2) ("The Commission may waive or defer payment of a charge in any specific instance for good cause shown, where such action would promote the public interest."); 47 C.F.R. §§ 1.1119(a), (c) & (f), 1.1166 ("fee ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

¹⁷ Black's Law Dictionary (9th ed. 2009) (extraordinary—"a highly unusual set of facts that are not commonly associated with a particular thing or event").

¹⁸ *Id.* (compelling—"something so great that irreparable harm or injustice would result if not met").

¹⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

the accuracy and completeness of its application.²¹ Thus, the applicant must provide timely and complete financial documents including, *e.g.*, the applicant's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the applicant lacks sufficient funds to pay the application fee and maintain service to the public.²²

This standard applies equally to a petition to defer payment. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay."²³

Discussion

An applicant with business before the Commission, including submitting an application to grant authorization for a service or petitioning the Commission to waive a rule or pay an application fee must comply with procedures set forth in our rules. For example, as set forth at 47 C.F.R. §§ 0.401, 1.7, and 1.1119, an applicant seeking a waiver of an a required application fee must properly file the petition for a waiver of the fee at the designated location, and the applicant either must pay the fee and request a refund or submit a properly supported petition to defer payment.

Here, Applicant submitted it directly to the Managing Director, rather than to the Commission's Secretary as required by our rules, hence the *Request* has never been *filed* before the Commission, and we dismiss.

Moreover, even if Applicant filed the petition with the Office of the Secretary, he failed to comply with the requirements of section 1.1119 either to pay the required fee or to include a separate properly supported petition to defer payment, hence, on this additional ground, we dismiss.

²⁰ *Bartholdi Cable Co. Inc. v FCC*, 114 F3d 274, 280 (DC Cir. 1997)(The Commission "need not sift pleadings and documents" to identify arguments that are not 'stated with clarity' by a petitioner. It is the petitioner that has the burden of clarifying its petition before the agency.").

²¹ 47 C.F.R. § 1.65 ("Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished ... is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate.).

²² *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

²³ Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011); 47 C.F.R. § 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment to financial hardship, supported by documentation of the financial hardship.").

In addition, as we discuss in detail below, Applicant's financial information is incomplete.

Furthermore, because the Commission's International Bureau dismissed Applicant's 214 authorization, Applicant's *Request* is moot, which is a separate ground for dismissal. This disposes of the *Request*; however, as matter of administrative economy, we look to the merits of Applicant's submission. As we discuss next, we find even if Applicant properly filed his *Request* and either paid the fee or petitioned to defer payment, Applicant failed to establish financial hardship²⁴ and both good cause in the form of presenting extraordinary and compelling circumstances and that the public interest is served by deferring payment and granting the waiver for both filings.²⁵

Applicant asserts payment of the application fee will cause financial hardship; however, he fails to demonstrate financial hardship will result from paying the fee. Moreover, Applicant failed to establish extraordinary and compelling circumstances and that a deferral of payment and a waiver outweighs the public interest in recouping the agency's costs. First, Applicant's assertion of financial hardship is limited to a broad claim that his total income for 2014 was \$12,724.00 from the Social Security Administration and a small annual income, and that his annual living and business expenses²⁶ total \$8,220.00. Thus, Applicant shows his combined living and business expenses are 64% of his reported income, which leaves Applicant \$4,504.00 from which to pay the \$1,130.00 application fee. The application fee is 8% of Applicant's total income or 25% of his net disposal income. Applicant fails to explain how the payment of the fee presents financial hardship.

Next, Applicant's assertions and exhibits present conflicting information, which undermines the accuracy and completeness of the information and the existence of financial hardship. For example, Applicant asserts his total income during 2014 is \$12,724.00,²⁷ and that for annual living and business expenses he expends \$8,220.00, which is 64% of his reported income. In contrast to this reported personal income, Applicant presented his *Business Plan 2015*, in which he states he has been "providing service since Jan 1, 1970," and his net profits from 2011 to 2014 ranged from \$38,000 to \$60,000. Furthermore, his local market for new business and new customers grew progressively from 2008 through 2016 about 19% and 22%, respectively. Applicant also reports for 2011 through 2014, that he had sales in the range from \$58,000 to \$100,000. From this, it is apparent that Applicant receives both personal income and business income. Even so, he fails to explain the different forms of business entities that he has been or will be using to provide the services and how they relate to his application or the requested waiver. For example, Applicant asserts he will be operating a business under a state registered fictitious name, *i.e.*, doing business as Marcus Tyrone Travenia; however, he included the U.S. Internal Revenue Service response to Applicant's election to file his corporate taxes as an S corporation. To qualify for that election, the taxpayer must be a corporation and meet other

²⁴ FY 1994 MO&O, 10 FCC Rcd at 12761-62, ¶ 13.

²⁵ 1994 Report and Order, 9 FCC Rcd at 5344 ¶ 29; Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order, 18 FCC Rcd At 26466, ¶¶ 5-6, *supra*.

²⁶ Applicant refers to legal fees of \$270 as part of his business expenses; however, he fails to explain whether the stated amount is a monthly, annual, or periodic expense. For purposes of our discussion, we treat the amount as a monthly recurring expense included in the annual total.

²⁷ SSA-1099; IRS 1040.

requirements.²⁸ We conclude Applicant is a shareholder or principal officer in a corporation; however, Applicant failed to identify that corporation by name or state of incorporation or relate it to the *Request*. Despite unexplained omissions or differences in business entities, it is apparent Applicant has funds sufficient to pay the application fee. For example, as an individual, Applicant has approximately \$4,500.00 in uncommitted annual income from which to pay the \$1,130.00 application fee, and as he operates the business entity described in the *Business Plan 2015*, he has sufficient financial resources to pay the application fee. Overall, Applicant failed to show any financial or business consequence from paying the fee or financial hardship, thus we deny the *Request*.

Furthermore, Applicant fails in his duty to clarify its position with the Commission²⁹ and to maintain the accuracy and completeness of the financial information in its application.³⁰ The Commission will not speculate to complete information or reconcile inconsistencies in a petition. Here, Applicant submitted his *Business Plan 2015* without furnishing financial information at the appendices, *i.e.*, there are blanks on all sheets labeled start-up expenses, start-up capital, cash flow, income projection, profit and loss statement, balance sheet, sales forecast, break-even analysis and miscellaneous documents. Applicant failed to provide accurate and complete financial information, and as such, he failed to demonstrate payment of the application fee will cause financial hardship. Hence, on this additional ground, we deny the *Request*.

Finally, Applicant fails to discuss and establish for both a petition to defer payment and the petition to waive the application fee extraordinary and compelling circumstances,³¹ and a finding that the public interest will be served thereby.³² Both prongs of the standard must be established; however, Applicant failed to establish either. Accordingly, on this additional ground we deny the *Request*.

²⁸ See <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/S-Corporations>. "To qualify for S corporation status, the corporation must meet the following requirements:

- Be a domestic corporation

- Have only allowable shareholders

- May be individuals, certain trusts, and estates and

- May not be partnerships, corporations or non-resident alien shareholders

- Have no more than 100 shareholders

- Have only one class of stock

- Not be an ineligible corporation (*i.e.* certain financial institutions, insurance companies, and domestic international sales corporations)."

²⁹ *Bartholdi Cable Co. Inc. v FCC*, 114 F3d 274, 280 (DC Cir. 1997) (The Commission "'need not sift pleadings and documents' to identify arguments that are not 'stated with clarity' by a petitioner. It is the petitioner that has the burden of clarifying its petition before the agency.").

³⁰ 47 C.F.R. § 1.65 ("Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished ... is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate.).

³¹ *Application Fee Report and Order 1987*, 2 FCC Rcd at 958 ¶ 70.

³² 47 U.S.C. § 158(d)(2); 47 C.F.R. §§ 1.1119, 1.1166. See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995) (*FY 1994 Report and Order*).

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


for: Mark Stephens
Chief Financial Officer